IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rati Ram & ors. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No.298/2003
against the order dated 21-2-2003 passed
by the Additional Sessions Judge, Rajgarh,
district Churu,in Criminal Revision No.22/2000.

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Date of Order: November 29, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. J.R. Beniwal, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 21-2-2003 passed by the Additional Sessions Judge, Rajgarh, district Churu (for short, "the Revisional Court" hereinafter) in Criminal Revision No.22/2000, whereby the revision petition filed by the petitioners against the order dated 22-6-2000 passed by the Judicial Magistrate, Taranagar, district Churu (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the

orders passed by the courts below. I have also gone through the record of the trial Court.

On a first information report being FIR No.150/1997, Police Station, Bhaleri dated 31-10-1997, the police registered the crime report for the offences under Sections 147, 148, 149, 323, 341and 452 IPC. After investigation, the police filed Challan against the petitioners No. 6 to 12; however, no Challan was led against petitioners No.1 to 5. An application under Section 190 of the Code filed by the complainant was dismissed by the trial Court. That order came to be challenged by the complainant before the Revisional Court and the Revisional Court set aside the order of the trial Court and remanded the matter to the trial Court to decide it afresh. Thereafter, by the order dated 22-6-2000, the trial Court arraigned them as the accused and took the cognizance. The order taking cognizance was challenged before the Revisional Court and the Revisional Court, vide impugned order dated 21-2-2003, dismissed the revision petition and maintained the order of the trial Court taking cognizance of the offences. Hence this criminal miscellaneous petition.

It is contended by the learned counsel for the petitioners that except the injured and his mother, none of the independent witnesses implicated the petitioners No.1 to 5 and, therefore, both the Courts below fell in error in not considering

the statements of the independent witnesses. According to the learned counsel, there is cross-case, being FIR NO. 151/1997 against Sita Ram, the complainant in this case, for the offences under Sections 323 and 504 IPC and the occurrence has taken place out-side the houses of both the parties.

I have carefully gone through the FIR lodged by injured Sita Ram. In the FIR, it has been stated that petitioner No.1 Rati Ram inflicted head injury to injured Sita Ram by a Lathi. The injury assigned to Rati Ram finds corroboration from the injury report of Sita Ram dated 31-10-1997, who suffered a lacerated wound on the skull on frontal region by a blunt object and simple in nature. The other injuries suffered by injured Sita Ram are three abrasions and one faint bruise. All the injuries were by blunt object and simple in nature.

On careful perusal of the statements of the eye witnesses, who were present at the place of the occurrence and the police recorded their statements under Section 161 of the Code, namely, Phoola Ram, Veeru Ram, Het Ram, Nop Singh, Rameshwar Lal, Sugna Ram, Neki Ram. Raja Ram, Shiv Narain, Hukma Ram, Om Prakash, Devi Lal, Dungar Ram, Het Ram, Dhanna Ram and Moman Ram, it appears that these witnesses do not show the presence of the petitioners No. 2 to 5 at the place of the occurrence; however, stated that petitioners No. 6 to 12 caused injuries to the injured. According to the learned

counsel, so far as these petitioners are concerned, apart from the injured and his mother, the other independent witnesses also implicate them, but so far as petitioners Surendra Kumar, Devi Karan, Het Ram and Kasi Ram are concerned, these witnesses categorically stated that they were neither the members of the unlawful assembly nor caused injuries to the injured and, therefore, both the Courts below fell in error in not considering the statements of as many as 17 witnesses.

On careful perusal of the record and the statements of the aforesaid witnesses, in my view, the order taking cognizance against petitioner No. 1 and petitioners No. 6 to 12 appears to have been passed on consistent evidence; however, there being two sets of evidence and independent witnesses, who are large in number, do not show the presence of petitioners No.2 to 5 at the place of the occurrence and, therefore, prima facie they have not participated in the occurrence, nor caused injury to the injured and as such, they were not the members of the unlawful assembly; therefore, the impugned order against petitioners No.2 to 5, in my view, is not sustainable.

In the result, the criminal miscellaneous petition is allowed. The orders impugned qua the petitioner No.2 Surendra Kumar, petitioner No.3 Dev Karan, petitioner No.4 Het Ram and petitioner No.5 Kasi Ram, passed by the trial Court dated 22-6-

2000, as also passed by the Revisional Court dated 21-2-2003, are set aside. However, the impugned orders passed by the trial Court and the Revisional Court against the petitioner No.1 and petitioners No. 6 to 12 are maintained. The record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

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